IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.102 of 2006 (O&M)
Date of decision:30.10.2006

Commissioner of Central Excise Commissionerate, Jalandhar (Hqrs. at Chandigarh)

....Appellant

versus

M/s. RK Mehra Textile Mills, Amritsar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. MS Guglani, Central Govt. Counsel for the petitioner.

JUDGMENT:

This appeal has been preferred by the revenue against the order dated 18.1.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal) in E/2917/2000-NB(S), proposing following substantial questions of law:-

"a) Whether payments made through demand drafts are sufficient evidence to establish the existence of a firm?

b) And whether bonafide transactions ought to accompany bonafide documents as well?"

The revenue authorities seized processed man-made fabrics from transport companies and the respondent was one of the firms which claimed goods. The claim was rejected and the goods were confiscated and order of penalty was also passed on the ground that the firm from which the respondent claimed to have purchased the goods, was non-existent. The respondent relied upon adjudication Order No.94-118/CE/CHD/2000/Pt/IV dated 30.5.2000, wherein it was held that M/s. Shir Hind Textile was duly working at the given address, though for some time, it was lying closed and this order vitiated a contrary order to the effect that the said firm was bogus.

It was further submitted that on verification, it was established that other firm M/s. A.J.Fabrics had shifted its business, while no enquiry was conducted in respect of invoices issued by M/s H.F.Textiles and M/s. Z.Y.Textiles, though their address was available. The payment was made by the respondent through bank draft and was confirmed by the bank.

The Tribunal recorded the following finding:-

> "....We find that in respect of Shir Hind Textiles, Surat which is held to be non-existance by the adjudicating authority in another adjudication order on verification we found that this firm was in existence during the relevant time. The same situation is in respect of M/s. A.J.Fabrics. The Appellant paid the price of the impugned goods through bank drafts and as per the certificate issued by Bank of Baroda Service Branch, Surat, bank drafts were encashed. Further, I find that no enquiry was conducted regarding the existence of other firm. In these circumstances as payments were made through bank drafts which were duly encashed by the traders, the impugned order is not sustainable, therefore, the impugned order in respect of the present appellant is set aside and the appeal is allowed."

Learned counsel for the revenue submitted that mere payment by bank draft was not sufficient evidence in absence of bonafide documents.

We find that the Tribunal has recorded a finding of fact based on reasons which have not been shown to be non-existent.

In view of the said finding, we are unable to hold that any substantial question of law arises.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 30, 2006
'gs'

(Rajesh Bindal)
Judge